

MARKET CONDUCT EXAMINATION REPORT
AS OF DECEMBER 31, 2002

Bankers Life and Casualty Company
222 Merchandise Mart Plaza
Chicago, IL 60654

NAIC Group Code: 233
NAIC Company Code: 61263
Colorado Company No.: 889

EXAMINATION PERFORMED
for the
STATE OF COLORADO
DEPARTMENT OF REGULATORY AGENCIES
DIVISION OF INSURANCE

**Bankers Life and Casualty Company
222 Merchandise Mart Plaza
Chicago, IL 60654**

**MARKET CONDUCT
EXAMINATION REPORT
as of
December 31, 2002**

Examination Performed by

**Stephen E. King, CIE
Jo-Anne G. Fameree, AIE, FLMI, AIRC, ACS**

Independent Market Conduct Examiners

December 4, 2003

The Honorable Doug Dean
Commissioner of Insurance
State of Colorado
1560 Broadway, Suite 850
Denver, Colorado 80202

Commissioner:

A market conduct examination of Bankers Life and Casualty Company was conducted in accordance with and pursuant to §§10-1-203 and 10-3-1106, Colorado Revised Statutes. This examination focused on the Company's long-term care insurance business, involving a review of underwriting, rating, policyholder service, marketing, sales and claims practices. The Company's records were examined at their offices located at 5353 Elston Avenue, Chicago, IL.

The time period covered by the examination was from January 1, 2002 through December 31, 2002.

The results of the examination, herein, are respectfully submitted.

Stephen E. King, CIE

Jo-Anne G. Fameree, AIE, FLMI, AIRC, ACS

**MARKET CONDUCT
EXAMINATION REPORT
OF
BANKERS LIFE AND CASUALTY COMPANY**

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COMPANY PROFILE

Bankers Life and Casualty Company (“Bankers” or the “Company”) started as a mutual assessment company formed in 1932. The oldest predecessor, Hotel Men's Mutual Benefit Association of the United States and Canada, a mutual assessment association, commenced business on January 17, 1879, and was incorporated on April 6, 1880.

In 1935, John D. MacArthur purchased Bankers and managed the Company until his death on January 6, 1978. On October 30, 1984, I.C.H. Corporation, a Louisville, Kentucky holding company, acquired Bankers.

On November 9, 1992, Bankers Life Holding Corporation, which was formed by Conseco Capital Partners, L.P., acquired Bankers Life and Casualty Company. Today, Bankers is a wholly owned subsidiary of Bankers Life Insurance Company of Illinois, an intermediate life insurance holding company, which, in turn, is owned by Conseco, Inc. based in Carmel, Indiana.

On December 17, 2002, Conseco, Inc., filed for permission to reorganize under Chapter 11 bankruptcy protection. As a holding company, Conseco Inc. is a separate legal entity that is distinct and apart from its subsidiary insurance operations. Conseco Inc. completed its reorganization and emerged from Chapter 11 on September 10, 2003.

Bankers operates as an independent company and is regulated as a separate company that currently manages approximately \$5.9 billion in assets. It is one of the largest insurance companies in the United States, focused exclusively on the needs of senior Americans. Bankers services those needs through a broad portfolio of insurance products including long term care, life, annuities and Medicare supplement; a national sales force of career agents; and a dedicated group of long tenured home office employees.

Bankers released its first comprehensive Long-Term Care insurance product in 1985.

The Company was licensed and began operations in Colorado on September 15, 1947. Bankers is authorized to write Accident & Health, Annuities, and General Life contracts in Colorado and has two branch offices located in the state.

COMPANY OPERATIONS AND MANAGEMENT

Bankers Life and Casualty Company is domiciled in Illinois, and licensed in every state and the District of Columbia except New York.

For the year 2002, the Company reported \$5,578,000 in direct written premium for its long-term care insurance business, which represents a 6.15% market share of the long-term care insurance business in Colorado.

PURPOSE AND SCOPE OF EXAMINATION

Independent Examiners, contracting with the Colorado Division of Insurance (DOI), in accordance with Colorado Insurance Law, §§ 10-1-201, 10-1-203 and 10-1-204.C.R.S., which allows the Commissioner the discretion and authority to schedule and conduct examinations for the purpose of auditing business practices of insurers, reviewed certain business practices of Bankers Life and Casualty Company. The findings in this report, including all work products developed in the production of this report, are the sole property of the Colorado Division of Insurance.

The purpose of the examination was to determine the Company's compliance with Colorado insurance law and generally accepted operating principles related to long-term care insurance. Examination information contained in this report should serve only these purposes. The conclusions and findings of this examination are public record. The preceding statements are not intended to limit or restrict the distribution of this report.

Examiners conducted the examination in accordance with procedures developed by the Colorado Division of Insurance, based on model procedures developed by the National Association of Insurance Commissioners. Examiners have relied primarily on records and materials maintained by the Company. The market conduct examination covered the period from January 1, 2002, through December 31, 2002.

The examination included review of the following:

- Company Operations / Management
- Marketing and Sales
- Producers
- Underwriting - Forms / Policyholder Services
- Underwriting - Rating
- Underwriting - Applications
- Underwriting - Cancellations
- Claims

This examination report is a report written by exception. References to any practices, procedures or files, that contained no improprieties, were omitted. Therefore, the majority of the material reviewed may not be addressed in this report. In the course of the review, Examiners provided the Company Examination Memorandums and Comment Forms to obtain information, ask questions and address noted discrepancies. The Comment Form contains a section that allows the Company to provide a written response to the examiners' questions/comments.

An error tolerance level of plus or minus ten dollars (\$10.00) was allowed in most cases where monetary values were involved. However, in cases where monetary values were generated by computer or other systemic methodology, a zero (\$0) tolerance level was applied in order to identify possible system errors. Additionally, a zero (\$0) tolerance level was applied in instances where there appeared to be a consistent pattern of deviation from the Company's established policies, procedures, rules and/or guidelines.

When sampling was involved, a minimum error tolerance level of five percent (5%) was established to determine reportable exceptions. However, if an issue appeared to be systemic, or when due to the sampling process it was not feasible to establish an exception percentage, a minimum error tolerance percentage was not utilized. Also, if more than one sample was reviewed in a particular area of the examination (e.g. timeliness of claims payment), and if one or more of the samples yielded an exception rate of five percent (5%) or more, the results of any other samples with exception percentages less than five percent (5%) were also included.

Examination findings may result in administrative action by the Division of Insurance. During the course of the examination, all unacceptable or non-complying practices of the Company may not have been discovered. Failure to identify specific Company practices, however, does not constitute acceptance of such practices. This report should not be construed to either endorse or discredit any insurance company or product.

EXAMINERS' METHODOLOGY

In accordance with § 10-1-203, Colorado Revised Statutes, examiners reviewed the Company's business practices to determine compliance with Colorado insurance laws and regulations, as they pertain to long-term care insurance companies, as shown in the following exhibit.

Exhibit 1

Law/Regulation	Concerning
Section 10-1-108	Duties of Commissioner – reports – publications – fees – disposition of funds - adoption of rules.
Section 10-1-109	Rules and regulations of commissioner
Section 10-1-111	Grounds and procedure for suspension or revocation of certificate or license of entities.
Section 10-1-127	Anti-fraud Plan
Sections 10-2-1001 to 10-2-1101	Managing General Agent Act
Section 10-2-103	Licenses - General Provisions - Definitions
Sections 10-2-401 to 10-2-417	Licenses – Licensing and Appointment of Insurance Producers
Sections 10-2-701 to 10-2-704	Licenses – Business Conduct of Licensees
Section 10-3-105	Certificate of Authority
Section 10-3-109	Reports, statements, assessments, and maintenance of records - publication - penalties for late filing, late payment, or failure to maintain.
Sections 10-3-1101 to 10-3-1104	Unfair Competition – Deceptive Practices
Sections 10-19-101 to 10-19-115	Long –term Care Insurance Act
Regulation 1-1-7	Market Conduct Record Retention
Regulation 1-1-8	Penalties And Timelines Concerning Division Inquiries And Document Requests
Regulation 1-2-9	Fees Charged by Agents/Brokers
Regulation 2-1-7	Concerning Issuance of a Certificate of Authority
Regulation 4-4-1	Concerning Requirements for Long-term Care Insurance
Regulation 4-4-2	Implementation of Basic and Standard Long-term Care Insurance Plans
Regulation 4-4-3	Suitability Standards for Long-term Care Insurance Products

Company Operations / Management

Examiners verified the Certificate of Authority and reviewed Company management and administrative controls and record retention. Additionally, the Company's cooperation during the course of the examination was noted.

Marketing and Sales

Examiners reviewed all of the Company's marketing and sales material used in the State of Colorado during the examination period. These materials were reviewed to verify compliance with Colorado insurance laws, and to determine if the Company accurately represented its products. The total population of seventy-two (72) marketing and sales pieces was reviewed.

Producers

Examiners verified producer records to ensure producers soliciting business in the state of Colorado were properly licensed.

Underwriting – Forms / Policyholder Services

Examiners reviewed all forms provided by the Company, during the course of the examination, to determine compliance with Colorado insurance laws.

Underwriting - Rating

Examiners randomly selected a sample of fifty (50) new business files from a population of 879 files. In addition, Examiners randomly selected a sample of fifty (50) renewed business files from a population of 2,143. These files were reviewed to ensure proper handling and verify that the Company's filed rates were properly applied.

Underwriting – Cancellations / Declinations

Examiners randomly selected a sample of fifty (50) cancelled files, from a population of 400. Examiners reviewed these files to ensure accurate and timely processing of the premium refund. In addition, Examiners randomly selected a sample of fifty (50) declined files, from a population of 192. Examiners reviewed these files to ensure fair and consistent underwriting practices and accurate and timely processing of the premium refund.

Claims

Examiners randomly selected a sample of fifty (50) paid claims, from a population of 716. In addition, Examiners reviewed the entire population of fifty-six (56) denied claims. Examiners reviewed the Company's claims handling guidelines and claim information, to determine timeliness of processing and accuracy of payment.

EXAMINATION REPORT SUMMARY

The examination resulted in a total of two (2) finding in which the Company did not appear to be in compliance with Colorado insurance law. The following summarizes Examiner findings.

Company Operations / Management: Examiners found one (1) area of concern in their review of Company Operations / Management. Examiners identified the following issue:

- Failure to maintain records required for market conduct purposes.

Marketing and Sales: In the area of Marketing and Sales, no compliance issues or concerns were identified and thus are not addressed in this report.

Producers: In the area of Producers, no compliance issues or concerns were identified and thus are not addressed in this report.

Underwriting – Forms / Policyholder Services: Examiners found one (1) area of concern in their review of forms. Examiners identified the following issue:

- Using an exclusionary provision that is not permitted under Colorado insurance law.

Underwriting – Rating: In the area of Rating, no compliance issues or concerns were identified and thus are not addressed in this report.

Underwriting – Cancellations: In the area of Cancellation refunds, no compliance issues or concerns were identified and thus are not addressed in this report.

Claims: In the area of Claims, no compliance issues or concerns were identified and thus are not addressed in this report.

Results of any previous Market Conduct Exams are available on the Colorado Division of Insurance's website at www.dora.state.co.us/insurance or by contacting the Colorado Division of Insurance.

A copy of the Company's response, if applicable, can be obtained by contacting the Company or the Colorado Division of Insurance.

MARKET CONDUCT EXAMINATION REPORT

FACTUAL FINDINGS

BANKERS LIFE AND CASUALTY COMPANY

**COMPANY OPERATIONS AND MANAGEMENT
FINDINGS**

Issue A1: Failure to maintain records required for market conduct purposes.

Colorado Regulation 1-1-7 (Repealed And Repromulgated June 1, 2003), Market Conduct Record Retention, states in part,

Section 4. Records Required For Market Conduct Purposes

- A. Every entity subject to the Market Conduct process shall maintain its books, records, documents and other business records in a manner so that the following practices of the entity subject to the Market Conduct process may be readily ascertained during market conduct examinations, including but not limited to, company operations and management, policyholder services, claim's practices, rating, underwriting, marketing, complaint/grievance handling, producer licensing records, and additionally for health insurers/carriers or related entities: network adequacy, utilization review, quality assessment and improvement, and provider credentialing. Records for this regulation regarding market conduct purposes shall be maintained for the current calendar year plus two prior calendar years.
- B. Each producer of record, if the carrier does not maintain, shall maintain records for each policy sold, and the records shall contain all work papers and written communications in the producer's possession pertaining to the documented policy.

Section 12. Records Usually Required For Examination ...

- F. Underwriting and rating practices: annual rate filing, company rating plan and rates, disclosures, producer payments, credits, deviations, schedule rating, IRPM plans, expense/loss cost multipliers, statistical coding/reporting, premium audits, loss reporting, policy forms and filings, underwriting policies, procedures, and manuals, *declinations/rejections*, [emphasis added] cancellations/nonrenewals, rescissions, policyholder records (applications, policy riders, correspondence, policy forms), guaranteed issue, preexisting conditions and privacy of protected personal information;

Specific records relative to these areas of operations will be requested either through prior written notification, during the pre-examination conference or during the examination. These records shall be made available to the examination staff when the staff arrives at the insurer's office or upon the date specified by the examiner in charge.

It is the Company's procedure to mail refund checks to the branch office of the writing agent. It is then the agent's responsibility to assure timely delivery of the refund checks to the consumer. Based on the information provided by the Company's representative, the Branch office does not maintain documentation regarding the delivery of such refund checks for the required period of two calendar years.

**Market Conduct Examination
Company Operations and Management**

Bankers Life and Casualty Company

Based on the above information, it appears that the Company may have failed to maintain the records in accordance with Regulation 1-1-7, as outlined above and therefore is not in compliance with the stated regulation.

Recommendation No. 1:

Within 30 days, the Company should provide documentation demonstrating why it should not be considered in violation of Regulation 1-1-7. In the event the Company is unable to show such proof, it should provide evidence to the Division of Insurance that it has revised its record maintenance procedures to ensure future compliance with Colorado insurance law.

UNDERWRITING – FORMS / POLICYHOLDER SERVICES
FINDINGS

Issue E1: Using an exclusionary provision that is not permitted under Colorado insurance law.

Colorado Regulation 4-4-1, (Amended January 1, 1997), Concerning Requirements for Long Term Care Insurance, states in part:

VI. Policy Practices and Provisions

- B. Limitations and Exclusions. No policy may be delivered or issued for delivery in this state as long-term care insurance if such policy limits or excludes coverage by type of illness, treatment, medical condition or accident, except as follows:
1. Preexisting conditions or diseases.
 2. Mental or nervous disorders; however, this shall not permit exclusion or limitation of benefits on the basis of Alzheimer's disease, senile dementia, other organic brain syndromes, or other types of senility diseases;
 3. Treatment provided in a government facility (unless otherwise required by law) when there are no charges for services, services for which benefits are available under Medicare or other governmental program (except Medicaid or except as otherwise required by law), any state or federal workers' compensation, employer's liability or occupational disease law, or any motor vehicle no-fault law, services provided by a member of the covered person's immediate family and services for which no charge is made normally in the absence of insurance.
 4. This Subsection B is not intended to prohibit exclusions and limitations by type

The Company's forms: GR-N010 (01), GR-N015 (01), GR-N240, GR-N250, GR-N270, GR-N280, GR-N340, GR-N350, GR-N370, GR-N380, GR-N400, and GR-N410 each contain the following exclusion "...services or supplies provided by a person who ordinarily lives in the insured's home."

It appears that the Company is not in compliance with Colorado insurance law in that its forms contain the above referenced exclusion that is not one of the allowable exclusions listed in Regulation 4-4-1.

Recommendation No. 3:

Within 30 days, the Company should provide documentation demonstrating why it should not be considered in violation of Colorado Amended Regulation 4-4-1. In the event the Company is unable to show such proof, it should provide evidence to the Division of Insurance that it has revised all applicable policy forms to ensure compliance with Colorado insurance law.

SUMMARY OF ISSUES AND RECOMMENDATIONS

ISSUES	Rec. No.	Page No.
COMPANY OPERATIONS AND MANAGEMENT		
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Independent Market Conduct Examiners

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